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holds that the Commission is specially charged with important duties in connection with the enforcement of the act in question by the laws of North Carolina, and puts the case within the second class.

MUNICIPAL CORPORATIONS—BRIDGES—LIABILITY TO REPAIR

The way in which our courts will many times straddle an issue is illustrated by the recent case of *City of Flemingsburg v. Fleming County*, 105 S. W. (Ky.) 133. The controversy was as to whether the county or the city should bear the expense of rebuilding a certain bridge in the most populous part of the city.

The burden of building and repairing the highways and bridges of the state had been imposed by statute upon the various municipal corporations. But as between county and city it was not clear from the wording of the statute upon which corporation fell the burden of rebuilding a bridge within the boundaries of both. There was an express provision that the county must repair public bridges within the county and forming part of the county highways. But the duty to control and care for the "streets and public places" within the boundaries of the city was cast upon the city. The county contended that the bridge was a part of the city's "streets and public places" and hence should be taken care of by the city. On the other hand the city contended that though the bridge was in one sense a part of its streets yet that the legislature used the term "streets and public places" in a limited sense and plainly its intention was to exclude bridges from that term. This legislative intent the city deduced from the fact that the legislature imposed the duty upon cities of the first, second, third and fourth classes to construct and repair "streets and bridges" whereas among the duties imposed upon cities of the fifth class, to which class Flemingsburg, belonged, and towns of the sixth class the word "bridge" is not mentioned. It was maintained that the legislature intentionally omitted the word "bridge" from the list of duties put upon cities of the fifth class and towns of the sixth class because they were the smallest and could not be expected to stand the expense of maintaining large bridges which happened to be within their boundaries, particularly as the benefits would accrue more to the welfare of the county than to that of the city. But the county claimed that the bridge was in the center of the city, that most of the traffic over it was local in its character, that it was part of the city's "streets and public places" and that therefore the city should bear the expense.

The court in handling the troublesome question before it

seems to have put stress upon the consideration, for whose benefit the bridge would be, rather than upon the consideration, upon whom, the legislature had cast the burden. It came to the conclusion that each corporation must pay a part of the expense, proportionate to the benefit it would derive from the bridge, as measured by the character of the travel over it. No doubt such a conclusion was a just one according to political science reasoning. The situation called for some remedy but was that remedy a judicial one? Did not the court invade the realm of the legislature? The legislature had committed this thing to the care of the county and that to the care of the city and so on through the matters pertaining to local government; but however ambiguous it may have been in pointing out these individual duties, surely it seems that the intention of the legislature was to impose all of these enumerated duties upon either one or the other of these public corporations. The court found that the legislation was insufficient and did not do complete justice. In trying to remedy the evil the court held that it must have been the intention of the legislature that these corporations share the burden because such would be highly equitable. But no matter how equitable or just a provision might have been had it been inserted, such a fact does not make it a part of the intention of the legislature.

The court had previously been confronted with the same troublesome facts in the case of *Leslie County v. Wooten*, 25 Ky. Law Rep. 217, except that the bridge in that case was in the outskirts of the city. The court there decided that the legislature did not intend that the phrase "streets and public places" should include bridges on country roads used mostly for county travel even though within the boundaries of the city. Such construction is common in this country. *Union Drainage Dist. v. Highway Commissioners*, 87 Ill. App. 93. But when the court decided in the case under consideration that the county and city must share the expense, it seems not only to have gone too far in construing the intention of the legislature, but also to have added to the confusion in the law on the subject in Kentucky. In *Town of Paintsville v. Commonwealth*, 21 Ky. Law Rep. 1634, the court had held that the town could be indicted for failure to keep in repair a bridge within its boundaries even though the bridge had been built and previously repaired by the county. That decision seems in conflict with the spirit of the legislative intent as interpreted by the court in *Leslie County v. Wooten*, *supra*, and in the case under consideration.

Furthermore, even though the chancellor should have no difficulty in determining the proportion of county as distinguished from city travel, who would have control of the bridge? Control of repairs should rest with the body liable to make them. *Whitehall v. Freeholders of Gloucester*, 40 N. J. Law 305. Would it be practical for the country to have, say, thirty-seven one hundredths of the control?

Thus the confusion has been increased even though the court in reaching its conclusion administered a remedy which would more properly have come from the legislature. Such interpretation of statutes from the outside as we might say illustrates well the truth of the words of that eminent jurist, Judge Coleridge, in *Lumley v. Gye*, 2 E. & B. 269, where he said, "It is wiser to ascertain the powers of the instrument with which you work, and employ it only on subjects to which they are equal and suited; and if you go beyond this you strain and weaken it, and attain but imperfect and unsatisfactory, and often only unjust results."